S.B. CIVIL MISC. WRIT PETITIN No.655/1999
SHIVJI LAL & Ors V/s BOARD OF REVENUE & Ors

10.1.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri G.Baradar, for the petitioners.
Shri B.S. Chhaba, Dy. Govt.Advocate for the respondents.

REPORTABLE

Challenge in this case is the judgment dated 6.11.1996 passed by the learned Board of Revenue on a reference of Additional Collector, Tonk u/s 82 of the Rajasthan Land Revenue Act, 1956 and the order dated 23.12.1997 by which the Board rejected review petition. The petitioners are resident of village Kiraval, Tehsil Malpura, District Tonk. They have asserted that the agricultural land comprising Khasras Nos. 1182/5.4, 1393/1.10, 1396/4.17, 1401/1.0, 1410/31.8, 1303/5.5 and 1385/7.8 measuring total area 23 bighas and 3 bishwa situated in village Kiraval Tehsil Malpura, has been in their cultivatory possession since the time of their ancestors. Settlement of village Kiraval was made in Samvat 2008 (year 1951). Settlement office recorded such land as “Talabi” in the revenue record. Copy of the Khasra settlement has been placed on record. It is submitted that the lands of Khasras No. 1303, 1385, 1392, 1397, 1401 and 1410 are the lands of the

then State of Jaipur and the cultivators used to pay rent to the State authorities. During settlement of the Samvat 2010, these lands were entered as Sivay Chak Lagani, therefore, the names of cultivators were not shown in the record. Section 16 bars Khatedari rights in the land for casual or occasional cultivation in the bed of river or tank. According to the petitioners, however, the land in their cultivation was irrigated land and source of irrigation was tank and not the land used for casual or occasional cultivation in the bed of tank. The State Government issued circulars and decided to change land used for cultivation in the bed of tank prior to 13.1.1958, may be continued to be used for agriculture purpose and possession of cultivators should not be disturbed. On 6.9.1971, Tehsildar Malpura treating the land as 'Talabi Peta' passed an order for cultivation and on the same date, he granted Gair Khatedari rights in favour of the petitioners regarding the land in dispute. Pursuant to the said order, mutation No.261 was attested in their favour, copy of which has been placed on record. The land in dispute was never of casual or occasional cultivation in the bed of tank. The petitioner has also produced copies of Khasra

Girdawari of Samvat 2027 to 2030.

The Additional Collector,Tonk made a reference u/s 82 of the Rajasthan Land Revenue Act to the Board of Revenue, Ajmer on 24.3.73 on the premises that Tehsildar Malpura has wrongly attested the mutation in favour of the petitioners on account of their alleged prolonged possession since the time of their ancestors. Such land has been recorded as Talabi Avval Sivay Chak in revenue record settlement Jamabandi of Samvat 2046 to 2049. In view of the bar contained in section 16 of the Rajasthan Tenancy Act, Khatedari rights cannot accrue to the petitioners in talabi land. Mutation attested in their favour was therefore against the law and deserves to be set aside. The Board of Revenue accepted the reference vide order dated 6.11.1996 and thereafter also rejected the review petition filed by the petitioners vide order dated 23.12.97. It is against these two orders that the present writ petition has been filed.

I have heard Shri G. Bardhar, the learned counsel for the petitioner and Shri B.S. Chhaba, the learned Deputy Govt. Advocate for he respondents.

Shri Bardhar argued that the revenue courts have wrongly considered the land in dispute as Tank bed

land used for casual or occasional cultivation. He referred to section 150 of the Rajasthan Land Revenue Act which provides for classification of soil. Section 150 provides for classification of the soil in different classes in accordance with rules made thereunder. Such rules framed by the Government are known as Rajasthan Land Revenue (Survey, Record & Settlement) Rules, 1957. Rule 39 of the said rules has been framed with a view to give to effect to the provisions of section 150 of the Rajasthan Land Revenue Act. Shri Bardar submits that rule 39 includes Nahari or Talabi land irrigated by canal or tanks and Talabi Petha irrigated by tank bed areas. Shri Bardar, therefore argued that Talabi Lagan does not mean that the land in question would not be available for conferring Khatedari rights and section 16 of the Rajasthan Tenancy Act would not be attracted. He submits that section 16, even otherwise amended on 13.1.1958.

On the other hand, Shri B.S. Chhaba, learned Dy. Government Advocate argued that the Board of Revenue has examined the original records and found that the land in dispute recorded as Mazkoor Talabi Avval. Such entry was made in the settlement of the Samvat 2008 which is the year 1951. It would therefore be

clear that the said entry was made not only prior to enforcement of the Rajasthan Land Revenue Act, 1956 but also before enactment of the Rajasthan Tenancy Act, 1955. He submits that the land was recorded as Sivay Chak Lagani in Samvat 2010 and thereafter it was referred to as Sivay Chak Mazkoor again in the land record Khatooni of Samvat 2046 to 2049. The name of the petitioners could not have been recorded as Gair Khatedari and mutation recorded in their favour was bad in law. The learned Board of Revenue, therefore has not made any error in accepting the reference. It was further argued that even if for the sake of argument, the land is not considered as Talabi land, still the same would not be available for allotment because the Tehsildar, on his own could not confer Gair Khatedari rights by way of regularisation of old possession as such allotment can be made only on recommendation of the Land Allotment Advisory Committee consisting of S.D.O., M.L.A. and Sarpanch.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the records.

Section 16 was purposely amended by the legislature vide gazette notification dated

13.1.1958. Section 16 categorically provides that notwithstanding anything contained in the Act or in any other law or enactment for the time being in force in any part of the State, Khatedari rights shall not accrue in pasture land, land used for casual or occasional cultivation in the bed of a river or tank. This, therefore, makes clear that Khatedari rights do not accrue on the land used for casual or occasional cultivation in the bed of a river or tank. By the aforesaid amendment, tank was purposely added. Not only the land which is used for casual or occasional cultivation in the bed of a river or tank would not be available for granting Khatedari rights as per of clause (ii) of section 16, but its clause (xiv) also provides for one more category of exclusion from the purview of the land available for grant of Khatedari rights. The said clause provides that land which has been set apart or is, in the opinion of the Collector, necessary for the flow of water therein into any reservoir or tank. No Khatedari shall accrue in such land. The petitioners themselves do not deny the fact that the land in dispute was recorded as Talabi in Samvat 2008 much prior to the enforcement of Rajasthan Tenancy Act and in the land records Khatooni was

recorded as Sivay Chak Mazkoor Talabi in settlement of the Samvat 2010. The petitioners have placed on record the settlement Khatuni Annex. 2 according to which also this land has been shown to be recorded as Sivay Chak Mahkama. The names of the petitioners are shown in entry of the relevant column as Up-Krishak. Khasra Girdawari of 2030 which is placed on record as Annex. 5 however clearly shows that the land has been indicated in the classification of soil as Talabi and in the relevant entry of the Khatooni as Sivay Chak Lagani. The Tehsildar when he conferred upon the petitioners' Gair Khatedari rights on 24.3.73 by way of regularisation of their possession, correspondence to Samvat 2030, that time this land was recorded not only as Talabi but also as Sivay Chak Lagani. This is proved even as per the document placed on record by the petitioners at annexure 5. The learned Board of Revenue has thus not committed any error which can be described as one apparent as on the face of record so as to warrant interference by this court.

I do not find any merit in this writ petition. The writ petition is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/